

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL W. BURNS,

Defendant.

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CASE NO. 4:22-cr-00154-1

ORDER

[Resolving Doc. 70]

JAMES S. GWIN, UNITED STATES DISTRICT COURT JUDGE:

Defendant Michael Burns moves for a sentence reduction under 18 U.S.C. § 3582(c)(2) and U.S. Sentencing Guidelines Amendment 821.¹

Amendment 821 changes the assignment of “status points” for criminal history calculations. For defendants with seven or more criminal history points, Amendment 821 reduces those defendants’ status points to one point.² For defendants with six or fewer criminal history points, Amendment 821 reduces those defendants’ status points to zero.³

Although Amendment 821 applies retroactively, a district court may not modify a defendant’s sentence based on a retroactive amendment unless the defendant is eligible under U.S. Sentencing Guidelines § 1B1.10.⁴ And under § 1B1.10(a)(2)(B), a defendant is not eligible if applying the retroactive amendment does not lower the defendant’s guideline range.⁵

¹ Doc. 70.

² U.S. Sent’g Guidelines Manual § 4A1.1(e) (U.S. Sent’g Comm’n 2023); *see also* <https://www.ussc.gov/guidelines/amendment/821>.

³ *Id.*

⁴ *Dillon v. United States*, 560 U.S. 817, 827 (2010).

⁵ U.S.S.G. § 1B1.10(a)(2)(B).

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In this case, the Court sentenced Defendant Burns using the guideline calculation for Criminal History Category IV, because Smith had nine total points.⁶ Amendment 821, reduces Defendant Burns' criminal history points to eight. But that does not change Burns' Criminal History Category⁷ and therefore does not change Burns' guideline range.

For this reason, Defendant Burns is not eligible for a sentence reduction under Amendment 821 and 18 U.S.C § 3582(c)(2). The Court **DENIES** the sentence reduction motion.

IT IS SO ORDERED.

Dated: February 12, 2024

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

⁶ Doc. 67, PageID #: 575; Doc. 60, PageID #: 523.

⁷ See [U.S. Sent'g Guidelines Manual, § 5A \(U.S. Sent'g Comm'n 2023\)](#) (Sentencing Table).